(23)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक M.A.No.247 सन् 2004

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	APPELLANT (Non-applicant No.3) :	United India Insurance Company Limited, Through : its Divisional Manager, Divisional Office Main Road, Korba, Tah. & Dist. Korba (C.G.)
		VERSUS
	RESPONDENTS (Applicant No.1) : 1.	Ramkumar Naik, Aged 50 years, S/o Laldeo Naik, R/o Navatoli (Dhamadand) Tahsil & P.S. Kunkuri, Distt. Jashpur (C.G.)
	(Non-Applicant No.1) 2.	Jaheer Khan @ Jahiruddin S/o Kamaruddin, R/o Kunkuri, P.S. Kunkuri, Distt. Jashpur (C.G.) (Driver)
	(Non-applicant No.2) 3.	Manoj Jain S/o Jagmohan Jain, R/o Kunkuri, P.S. Kunkuri, District Jashpur (C.G.) (Owner)
	(Non-applicant No.4) 4.	Deepak Kumar Agrawal, S/o Ashok Agrawal, Occupation Business, R/o Kunkuri, Distt. Jashpur.
	Present: Mr. Dashrath Gupta, counsel for the appellant/Insurance Company. Mr. J.K. Shastri with Ms. Sushma Chandel, counsel for the respondents No. 2 to 4.	

(पीछे देखिये)

XI-HC-22

(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक M.A. 247 सन् 2004

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24.4.2007

The appellant/insurer has preferred this appeal under Section 173 of the Motor Vehicle Act, 1988 (for brevity 'the Act') against the award dated 21st November 2003 passed by Motor Accident Claims Tribunal, Jashpur in Claim Case No. 9/03 whereby learned Claims Tribunal has awarded a sum of Rs.45,000/- to the claimant/respondent No.1 for the injuries sustained by him in the motor vehicle accident dated 8.9.2000.

The only ground raised in this appeal is that the vehicle in question was being used for carrying passengers and 15-20 passengers were traveling by the said vehicle which is registered as goods carriage. There is no evidence to show that the insurance policy covered risk of passengers in a public goods carriage and in these circumstances, the Tribunal ought to have exonerated the appellant/Insurance Company from the liability of payment of compensation as the vehicle was being driven in contravention of the policy conditions.

Learned counsel for the appellant submits that from the evidence available on record and particularly from the First Information Report which has been exhibited as P/1, it would be evident that 15-20 passengers were traveling in the vehicle at the time of accident and the said vehicle was a public goods carrier.

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(55)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक M.A...247... सन् 2009

..... विरुद्ध .....

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Relying upon the judgment in the matter of **Oriental Insurance Co. Ltd. Vs. Mahaswari and others** reported in **2006(3) T.A.C. 565 (H.P.),** it is argued by learned counsel for the appellant that goods carriage is not meant for carrying passengers under the garb of carrying owners of goods, passengers cannot be carried and carrying passengers in a goods vehicle is a gross violation of the Act and in these circumstance, the insurance company cannot be made liable to pay compensation.

On the other hand, learned counsel for respondents No. 2 to 4 submits that the appellant/insurance company in its written statement before the Tribunal has not raised any specific objection that the claimant was traveling as a gratuitous passenger in the vehicle in question. Moreover, there is a specific evidence available on record that the persons seven in number were traveling in the goods vehicle along with their goods while they were proceeding to market.

I have heard learned counsel for the respective parties and have perused the impugned award as also the evidence available on record.

Learned claims Tribunal has framed in all five issues for adjudication of the claim petition and the same are based on the pleadings of the respective parties. From perusal of the written statement of the appellant it is found that the insurance company

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ...M.A.247 **सन्** 2004

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

has not raised any objection that the claimant/respondent No.1 was traveling in the said vehicle as passenger in violation of the policy conditions.

Section 147 (b) (i) of the Act reads as under:

"147. **Requirements of policies and limits of liability**.- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which –

(a) xxxx xxxx xxxx xxxx

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) -

(i) against any liability which may be incurred by him in respect of the death of or bodily (injury to any person, including owner of the goods or his authorized representative carried in the vehicle) or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;"

In the absence of any pleading by the appellant/Insurance Company in its written statement that the claimant was traveling in the vehicle as a gratuitous passenger, it is not open to the appellant/Insurance Company to raise this ground for the first time in the appeal that the Insurance Company ought to have been exonerated from the liability of payment of award on the ground

(पीछे देखिये)

(27)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ...M.A...247... सन् 2004

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that the claimant was traveling in the vehicle as gratuitous passenger, as this was not an issue before the learned Tribunal and there is evidence available on record to show that the persons seven in number were traveling in the goods vehicle along with their goods while they were proceeding to market.

In the result, the appeal being devoid of substance is liable to be dismissed and is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

(पीछे देखिये)